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**From:** Brush, Jason [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ADE1A3282440ED5A333DCD77F2DFC4A-JBRUSH]  
**Sent:** 3/22/2017 4:12:33 PM  
**To:** Goldmann, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2bf5b6f833ea46cca6abe2bb68961167-EGOLDM02]  
**Subject:** FW: Questions for meeting with SPD - 401 and mitigation

Thanks – I think there was a doc Horst put together with most of this timeline close to his retirement. Far more info than I want but at least it would probably have most of all those dates in one place.

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**From:** Goldmann, Elizabeth  
**Sent:** Wednesday, March 22, 2017 9:10 AM  
**To:** Brush, Jason <Brush.Jason@epa.gov>  
**Subject:** RE: Questions for meeting with SPD - 401 and mitigation

I will look in the record to see if we received a letter from Hudbay. Will compile bullet list of key dates.

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**From:** Brush, Jason  
**Sent:** Tuesday, March 21, 2017 7:13 PM  
**To:** Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>  
**Cc:** Amato, Paul <Amato.Paul@epa.gov>  
**Subject:** Re: Questions for meeting with SPD - 401 and mitigation

Thanks. Have you confirmed that we did not get a RM reaction to Jared's WQ aspects letter? Also, can you compile a bullet list of key dates for TT? Just major events like 3b, Deis rating, CEQ calls start and end, SPL decision, SPD referral -- whatever else you think important I may have missed. Thanks -JB

Sent from my iPhone

On Mar 21, 2017, at 4:22 PM, Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov> wrote:

In a phone discussion between Tom Cavanaugh and Rob Leidy on March 7<sup>th</sup>, Tom Cavanaugh informed Rob Leidy the purpose of the March 10<sup>th</sup> meeting with Hudbay was to notify Hudbay of SPD's decision to deny the 404 permit and to present Hudbay with options. Based on a follow up call between Tom and Rob, we understand SPD has deferred the decision and agreed to further review of mitigation and 401 water quality.

We understand, this information was further corroborated in a recent discussion between CEQ and Corps HQ. Following a review of the administrative record, the Corps' review team recommended SPD evaluate an updated mitigation plan and seek a meeting between ADEQ, EPA, USFS, and Hudbay regarding water quality and Tier 3 impacts.

## Deliberative Process / Ex. 5

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**Mitigation** – The LA District determined the mine would result in significant degradation to waters of the U.S. and concluded the mitigation was not compensatory. In addition, the LA District concluded the proposed mitigation is not only inadequate but the proposal at Sonoita Creek Ranch has high risk and uncertainty and therefore the chance of success is low.

It is our understanding, SPD may consider an updated mitigation plan with claims from Hudbay that ILFs are available. As an agency member of the ILF Interagency Review Team, we are not aware of any ILFs available to Hudbay that would compensate for project impacts. Currently, there are two approved ILF Programs in the state of AZ. AZ Game and Fish Department has no ILF projects in this greater area available as mitigation. Tucson Audubon has a recently approved ILF. Due to their opposition to the proposed Rosemont Mine, the organization has stated they will not sell credits to Hudbay to offset impacts at the mine.

Lastly, Pima County Flood Control District has an ILF Program under review by the Corps and members of the IRT and not yet approved by the Corps. While Pima County has publicly opposed the proposed Rosemont Mine, they have not formally stated their intentions with regard to selling credits to Hudbay. Pima County is considering 10 project sites under the ILF program. Even if the ILF is approved, mitigation at these sites would not be compensatory. The Pantano site has already been deemed unsuitable by the Corps. The remaining prospective sites are located outside the watershed and at a great distance from the project site (8 sites are on the west side of the Santa Rita mountain range (the mine is on the east side).

**401 Water Quality** – In a letter to the Corps on April 14, 2015, EPA made a determination that the impacts of the project include substantial water quality aspects which may be outside the scope of the state's 401 certification review. These aspects must be considered in determining compliance with the Guidelines. In *Mingo Logan v. EPA*, the court ruled that under 401, *the CWA has identified state requirements as a floor that must be met, not a limit on federal authority* (2014). ADEQ acknowledged that issues by EPA raised on the draft certification are outside the scope of what ADEQ is legally authorized to consider under AZ state law (letter to EPA dated June 12, 2015). While ADEQ stated they share EPA's concerns about potential impacts to water resources, they believe the requirements of the certification, coupled with the APP and the 402 general permit will ensure protection of the OAW. EPA does not concur with this assessment.

Based on our analysis of the proposed project, if constructed, Tier 3 antidegradation standards will be violated. Our determination is based on the following considerations:

- Change in ambient concentrations predicted at the appropriate critical flow condition(s);
- Change in pollutant loadings;
- Reduction in available assimilative capacity;
- Nature, persistence and potential effects; and
- Potential for cumulative effects.

The State's Certification relies on a requirement for Huidbay to develop a Surface Water Mitigation Plan. The plan lacks detailed measures demonstrating Huidbay's ability to arrest and reverse the heavy metal contamination in stormwater which will degrade the downstream OAW.

## **Deliberative Process / Ex. 5**

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